

[REDACTED]

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

The information discloses that you were organized as an association under Federal law in January of 1984.

You were formed by a group of artists to promote art in the [REDACTED] area. Your organization arranges for its members to display, courtesy paintings at local businesses, provides art classes to the general public, operates an art gallery open to the general public and provides an art store for members to purchase supplies. Your artists are allowed to sell their works of art which are on display in local businesses and which are on display in your gallery. Your organization was collecting a [REDACTED] % commission on art sales. Your organization was also collecting a [REDACTED] % or [REDACTED] % commission on art classes conducted by members and non-members through your organization. You have decided to discontinue charging the [REDACTED] % fee on art sales and the association will no longer take an active role in gallery sales although your artists will be allowed to handle their own sales.

Membership in your organization is open to the general public for a \$ [REDACTED] annual dues. Your income has been from dues, store sales and art sales. Your disbursements are for the store costs, artists portion of art sales price and such items as postage and insurance.

Section 501(c) of the Internal Revenue Code of 1954 describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not

participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

In order for an organization to qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code of 1954, it must be both organized and operated exclusively for any one or more of the purposes set forth in that section of the law.

Moreover, an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 66-178, 1966-1 C.B. 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. The organization does not sell or offer the displayed works for sale.

Revenue Ruling 71-395, 1971-2 C.B. 228, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for recognition of exemption from Federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 76-152, 1976-1 C.B. 151, holds that a non-profit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges does not qualify for exemption under section 501(c)(3) of the Code.

The term "charitable" traditionally carried with it a connotation of "public benefit" as recognized in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Therefore, to be recognized as exempt under section 501(c)(3) of the Code, an organization must be organized and operated exclusively for charitable purposes; must serve a public interest, and must not be operated for the benefit of private interests.

As in the case of Revenue Ruling 76-152, the artists in your case are being directly benefitted by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale. Even though your organization no longer handles sales of art, your

exhibitors are allowed to sell resulting in a direct substantial benefit to the individual artists. This cannot be dismissed as merely incidental to your purposes and activities.

Furthermore, your arrangement which provides your instructors with [] to [] of your class tuitions also results in benefit to individuals.

Your art store activity provides a service to members and does not promote art education of the general public.

Most of your activities are designed with the interest of your incorporators and/or membership in mind rather than the general public.

We have concluded that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, inasmuch as you are not organized and operated exclusively for one or more of the exempt purposes specified in that section.

As provided by section 6104(c) of the Internal Revenue Code of 1954 and the applicable regulations, the appropriate State officials are being notified of our determination.

Until such time as you establish your exempt status for Federal income tax purposes, contributions made to you are not deductible by the donors on their individual tax returns.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall

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[REDACTED]

not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 302
Form 6018

[REDACTED]